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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91189629
Party	Plaintiff Borghese Trademarks Inc.
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Submission	Motion to Compel Discovery
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Date	07/01/2010
Attachments	Opposer's Motion to Compel Discovery.pdf (6 pages)(234497 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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Borghese Trademarks, Inc.,

v. Opposer,

Multi Media Exposure, Inc.

Opposition No.: 91189629
Serial No.: 77435171
Mark: PRINCE LORENZO BORGHESE'S
LA DOLCE VITA

Applicant.
-----X

OPPOSER'S MOTION TO COMPEL DISCOVERY

The Notice of Opposition in the present case was filed by Opposer Borghese Trademarks, Inc. ("Opposer") on April 8, 2009 against Applicant Multi Media Exposure, Inc. ("Applicant"). Opposer served its First Set of Interrogatories, First Set of Requests for Admissions, and First Set of Requests for the Production of Documents and Things ("the Discovery Requests") on August 27, 2009. Eight days before its responses to discovery were due, on September 23, 2009, Applicant filed its Motion for Summary Judgment. Opposer filed a Motion for Extension of Time to Respond to Applicant's Summary Judgment Motion on October 26, 2009 and on October 28, 2009 Opposer filed a Request for Discovery Pursuant to Rule 56(f). On November 25, 2009 the Board granted the Motion to Take Discovery. On January 8, 2010, Applicant served its Responses to Limited Discovery Requests of Opposer. The only discovery requests Applicant was instructed to respond to were Interrogatory Nos. 4, 5, 9, 10 and 11, Document Request Nos. 2, 3, 8 and 9, and Admission Request Nos. 10, 18, 19, 20, 21, 22, 23, 24, 25 and 26.

On June 16, 2010, the Board issued its Order denying both Applicant's Motion for Summary Judgment and Opposer's Cross Motion for Summary Judgment. Since Applicant had eight days left to respond to Opposer's Discovery requests, Applicant's responses were due on June 24, 2010. On June 28, 2010, Opposer notified Applicant's counsel by letter and email that Applicant's responses to Opposer's discovery requests had been due on June 24, 2010 and requested that the responses be provided by July 1, 2010. Opposer indicated to Applicant's counsel that if it did not receive those responses by July 1, 2010 that it would be forced to file a motion to compel. A copy of the June 28, 2010 letter from Moira J. Selinka, Esq. to Robert Raskopf, Esq. is attached at Exhibit A.

Applicant's counsel responded to Opposer's counsel's letter by stating that "according to normal practice" they had 30 days from the Board's order in which to respond to discovery. Applicant's counsel also stated that their client wanted to "revisit settlement" (prior settlement discussions have never taken place) and to that end their client called Opposer's client directly to schedule a meeting. Additionally, Applicant attempted to get Opposer's consent to a 45-day suspension of proceedings so that discovery would not be due until after that time. Opposer's counsel responded immediately requesting that Applicant's counsel cite to the rule that allows for discovery responses to be provided 30-days from a Board ruling and declined to give consent to a 45-day suspension. As a response, Applicant's attorney merely stated that "we can certainly agree to disagree concerning the response date." This refusal to respond by Applicant makes any further attempts to resolve this matter, without including the Board, moot. Therefore, Opposer respectfully requests that the Board compel Applicant to respond to Opposer's discovery requests.

Scope of Applicant's Discovery is Proper :

As noted in TMBP §408.01, each party has a duty to cooperate with its adversary in the discovery process and to make a good faith effort to satisfy the discovery needs of its adversary. Pursuant to TMBP §405.02, interrogatories may seek any information that is discoverable under Fed. R. Civ. P. 26(b)(1). The same holds true for requests for production under TMBP §406.02 and for requests for admission under TMBP §407.02.

The Board Should Order Applicant to Respond, Without Objection, to All of Opposer's Discovery Requests

As of the date of service of this motion, Applicant's interrogatory responses, document request responses and its responses to requests for admissions are overdue. With regard to Opposer's Admission Requests, they have not been responded to and should be deemed admitted. With regard to Opposer's Interrogatory Requests and Document Requests, since Applicant has provided no valid reason for having failed to respond to these requests in a timely fashion, and in fact is attempting to have the deadline to respond to discovery put off yet again, Applicant should now be directed to respond to such requests as put, i.e. without objection. Envirotech Corp. v. Compagnie Des Lampes, 219 U.S.P.Q. 448, 449-60 (TTAB 1979). (because opposer did not respond timely, "[applicant's] interrogatories must be answered completely and without objection."); MacMillan Bloedel Limited v. Arrow-M Corp., 203 U.S.P.Q. 952, 953-54 (TTAB 1979) (movant is entitled to an order directing adversary to provide responses without objection so long as movant first attempted to obtain same from adversary before seeking

intervention of the Board); Crane Co. v. Shimano Industrial Co., Ltd., 184 U.S.P.Q. 691 (TTAB 1975).

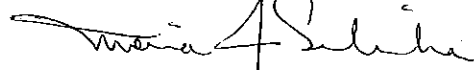
Conclusion:

For the reasons set forth above, Opposer's Motion to Compel Applicant's Discovery Responses without Objections should be granted.

Dated: July 1, 2010

Respectfully submitted,

BAKER AND RANNELLS, PA



Stephen L. Baker

Maira J. Selinka

Attorneys for Applicant

575 Route 28, Suite 102

Raritan, New Jersey 08869

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing OPPOSER'S MOTION TO COMPEL DISCOVERY in re Borghese Trademarks, Inc. v. Multi Media Exposure, Inc., Opposition No. 91189629 was forwarded by first class, postage pre-paid mail by depositing the same with the U.S. Postal Service on this 1st day of July, 2010 to the attorneys for the Applicant at the following address:

Robert Raskopf, Esq.

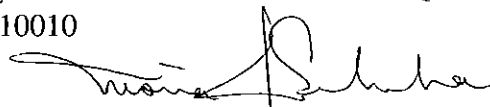
Claudia Bogdanos, Esq.

Jolie Apicella, Esq.

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New York, NY 10010



Maira J. Selinka

EXHIBIT A

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+NEW JERSEY
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PLEASE RESPOND TO THE NEW JERSEY ADDRESS
EMAIL: M.SELINKA@BR-TMLAW.COM

June 28, 2010

Via First Class Mail
& Email: robertraskopf@quinnemanuel.com
Robert L. Raskopf, Esq.
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Fl.
New York, NY 10010

RE: Opposition No. 91189629
Mark: PRINCE LORENZO BORGHESE'S LA DOLCE VITA
Borghese Trademarks, Inc. v. Multi Media Exposure, Inc.
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Dear Mr. Raskopf:

As you are aware, the Board issued its Order denying the cross motions for summary judgment in this Opposition proceeding on June 16, 2010. Therefore, Applicant's responses to Opposer's First Set of Interrogatories to Applicant, First Set of Requests for the Production of Documents and Things to Applicant, and First Set of Requests for Admission to Applicant were due by June 24, 2010. Opposer hereby demands that Applicant serve its responses to Opposer's discovery requests immediately. If Applicant's responses are not received at our office by Thursday, July 1st, Opposer will be forced to file a Motion to Compel with the TTAB.

Sincerely,

BAKER AND RANNELLS, P.A.



Moira J. Selinka

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